

CURTIS SMITH, No. 42043,
MELVIN LEROY TYLER, No. 09670,

v.

Defendants.

No. 04-4075-CV-C-NKL

Subsequent to plaintiff Melvin Leroy Tyler's appeal being forwarded to the United States Court of Appeals for the Eighth Circuit, he filed a motion seeking a temporary restraining order, and (previously dismissed for purposes of appeal) plaintiff Curtis Smith filed a motion seeking to vacate this court's order of October 3, 2007.

Plaintiff Tyler states he has been threatened that he will be locked up if he continues to pursue his current practice in this case. Tyler alleges that this court continues to allow state officials to harass him and other inmates who file federal cases. Tyler cites to alleged corruption by state and federal officials, including defense counsel in this case and the undersigned. Tyler prays for a court order pending his appeal that he be removed from the Jefferson City Correctional Center.

"A temporary restraining order may be granted without written or oral notice to the adverse party or his attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before the adverse party or his attorney can be heard in opposition. . . ." Fed. R. Civ. P. 65(b).

Tyler's broad, generalized claims that he and all inmates who file lawsuits with the federal court continue to be harassed and that he has been threatened to be "locked up" if he continues to pursue his current practice in this case, do not allege specific facts that immediate

and irreparable injury, loss or damage will occur if this court does not issue a temporary restraining order. Furthermore, the court notes that Tyler's continued allegations of corruption in this case are fanciful and do not merit the issuance of a temporary restraining order moving him from the Jefferson City Correctional Center pending the results of his appeal.

II. Motion to Vacate

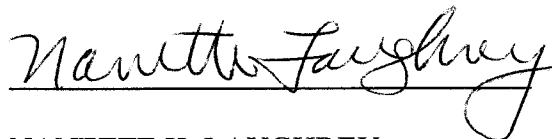
On October 3, 2007, this court granted plaintiff Curtis Smith's motion to be dismissed for purposes of the appeal filed by coplaintiff Tyler. Smith, pursuant to Fed. R. Civ. P. 60(b), seeks to vacate this court's order of dismissal, citing he now "knows the truth" that he "was not getting his pleadings, was left out, and learned that this was just another state means to impede suit." Smith's claims fail to provide a credible basis for this court to grant his Rule 60(b) motion. Smith was actively involved in this case and was not left out or otherwise denied access to the proceedings in this case.

IT IS, THEREFORE, ORDERED that plaintiff Smith's motion to vacate is denied.

[388] It is further

ORDERED that plaintiff Tyler's motion for a temporary restraining order is denied.

[380]



NANETTE K. LAUGHREY
United States District Judge

Dated: 11-1-07
Jefferson City, Missouri